***THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU**

**+WRIT PETITION NO.3490 OF 1996**

% 02-09-2005

# Puvvada Suseelamma. … Petitioner

v.

$ 1. Government of Andhra Pradesh, represented

by its Secretary, Revenue, Secretariat Buildings and 4 others.

… RESPONDENTS

! COUNSEL FOR PETITIONER: MS. M.Bhaskar Lakshmi

^ COUNSEL FOR RESPONDENTS: GOVT. PLEADER FOR LAND ACQUISITION.

< Gist:

> Head Note:

? CITATIONS:

1)1998(1) ALD 20 = 1997(6) ALT 573

2) 2005(1) ALT 36(SC)

**THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU**

On Friday, the second day of September,

two thousand and five.

**W.P.No.3490 of 1996**

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Puvvada Suseelamma, w/o Sri P.Narasimha Swamy,

residing of Kothapatnam Road, Ongole, Prakasam District.

…Petitioner.

And:

Government of Andhra Pradesh, represented by its Secretary, Revenue, Secretariat Buildings, Hyderabad and others.

…Respondents.

**O R D E R:**

An extent of Ac.140.44 cents, including the land to an extent of 0.78 cents in S.No.69/2 of Pellur village belonging to the petitioner, was acquired by the Government for Nagarjuna Sagar Project from various landholders. After completion of the project since it was felt that some of the lands acquired were not necessary for the project, those lands seem to have been re-conveyed to the concerned land owners on their repaying the amount of compensation paid to them. Since the land of the petitioner was not utilized in the construction of the project she made a request to the respondents to re-convey 0.78 cents in S.No.69/2 acquired from her, as the said land is kept vacant. As she did not receive any response from the respondents she got issued a registered notice through an advocate to the respondents on 9.5.1995, seeking re-conveyance of the land acquired from her. By the communication Rc.No.B1/3670/95 dated 28.8.1995, the District Collector (2nd respondent) informed that her request cannot be considered. Questioning the said communication, petitioner filed this writ petition.

2) The main contention of the learned counsel for the petitioner is that since the land acquired from the petitioner is not being used for the purpose for which it was intended and since the Government is contemplating to grant pattas of that land to some of the members of the weaker sections in the society, and since

the petitioner is prepared to return the amount of compensation awarded to her to the respondents she is entitled to re-conveyance of the land as per BSO.90(32) and so the respondents may be directed to re-transfer the said land to the petitioner, by placing strong reliance on **M. Venkanna Vs. District Collector (Land Acquisiion)**[1] where a direction was given to re-convey the land to the original owner, inasmuch, as some of the acquired lands were already re-conveyed to some of the erstwhile owner on the ground that they are not required for the purpose for which they were acquired, and that refusal to re-convey the land of the petitioner only violates Article 14 of the Constitution of India.

3) The contention of the learned Assistant Government pleader is that since the land acquired from the petitioner also stood vested in the Government respondents can utilize the said land for any other public purpose, though it initially was acquired for the purpose of Nagarjuna Sagar Project, and so question of re-transfer of the land to the petitioner does not arise, merely because the land of some other persons was re-transferred to them, in view of the ratio in **Government of A.P. Vs. Syed Akbar**[2] where the Apex Court after considering the scope of BSO.90(32), rejected the contention of the petitioners therein that they are entitled to re-conveyance of the land which is not utilized by the Government for the purpose for which it was acquired.

4) Since the land of the petitioner was acquired for a public purpose, and since the petitioner was paid compensation for the said land, that land became the absolute property of the Government. On the ground that the land acquired from her is not utilized for the purpose of the project, and is lying vacant, petitioner made a request to the respondents to reconvey the land acquired from her, to her, because some of other owners whose lands were acquired for the same purpose and which were not utilized for the project were re-conveyed their lands.

5) Question, whether a land acquired for a public purpose can be re-conveyed to the owner from whom it was acquired, when it is not utilized for the purpose for which it was acquired, as per BSO No.90(32) is not *res integra*

because the apex court in **Syed Akbar's Case,** relied on by the learned Assistant Government Pleader, held as follows in para 14 of its judgment:

> " At the hearing, we specifically asked learned counsel for the respondent whether the Board's Standing Order 90(32) was issued under any particular statute, the learned counsel was not able to point out to any provision of law under which it was issued. He was not in a position to show that the said order bears any statutory force. Even otherwise, as per para 32 of the said order, the land acquired, no longer required for the public purpose for which it was acquired, could not be disposed of in favour of any person other than the citizen of India and that too without the sanction of the Government. If the land acquired for the public purpose is specifically relinquished, such land could be disposed of as stated in the said paragraph. If the land relinquished is likely to be again required for public purposes, it should be merely leased out for such term as may be considered desirable in each case. If the acquired land was an agricultural land at the time of acquisition, it should be disposed of inviting for sale in public auction by giving wide publicity in respect of sale. If at the time of sale, anybody puts forth his claim in respect of any field either as an adjacent owner or as an original owner, the sale of that field should be stopped and his claim investigated and disposed of in the matter specified in sub-clauses (i) and (iv) of Note (2) of the Board's order 90(32). If it is found that his claim is not proved, the field should be sold by public auction. In the case on hand, there is nothing on record to show that the part of the acquired land which remained unused was relinquished by the Government. A letter of Resident Engineer stated that the unused land was no more required cannot amount to relinquishment of the said land by the competent authority. <u>In order to make a claim under para 32 of the said Board's Standing Order in the first place, it was necessary that the competent authority had subsequently relinquished the unused land. After such relinquishment of the land, the land had to be notified for sale in public auction. If at the time of sale of such land, the original owner made a claim, sale could be stopped and his claim could be investigated</u> and thereafter the land was to be disposed of in the manner specified under the said paragraph." (underlining mine)

From the above observations of the apex court it is seen that relinquishment and notification for sale in public auction is the *SINE QUA NON* for the erstwhile land-holder making a claim for reconveyance of the land acquired for him. Since there is no such relinquishment and notification BSO 90(32) cannot be invoked by the petitioner, more so because the land acquired for public

purpose can be utilized for any other purpose and since even according to the petitioner, the land acquired from her is going to be distributed to the weaker section of the society by way of pattas, which also is a public purpose.

6) The fact that respondents either in violation or ignorance of the mandatory requirement in BSO 90(32), as pointed out by the apex court in the above decision, re-conveyed the land to some other erstwhile land owners would not clothe the petitioner with a right to claim the same benefit, because any irregularity committed either due to ignorance of law or otherwise, cannot be made use of as a precedent and thus such irregularity cannot be allowed to be perpetrated. Therefore, **M.Venkanna's case** (1-supra) relied on by the learned counsel for petitioner is of no help in deciding this petition.

7) For the above reasons, petitioner is not entitled to any relief and hence the writ petition is dismissed. No costs.

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JUSTICE C.Y.SOMAYAJULU

2nd September 2005.

BCS

**L.R. copy to be marked.**